the late case of *Billingsley* v. *U. S.* (C. C. A., 1921), 274 Fed. 86. The books were identified by the witness Levy, who assisted in keeping them; this witness also acted as a salesman and testified that he had sold goods to the defendants. But it does not appear that he had any personal knowledge that the goods entered in the books had been delivered to the defendant. He also said that the books were kept in the regular course of business. The court said: "These books were properly kept * * * in the regular course of business by a person employed for that purpose. It was wholly unimportant whether the witness Levy made any or all the entries therein or not, and equally unimportant whether or not he had any recollection in reference to particular sales." The requirement here is less than that of cases following *Givens* v. *Pierson's Admx., supra,* in that no description of the method of keeping the books was required. This should be demanded by the courts. There is a possibility that under such a lenient rule of admissibility as in the *Billingsley* case self-serving documents may be introduced in evidence. Compelling the party offering the book to explain the system by which it is kept places no unreasonable burden upon him and at the same time affords the court a fair opportunity of deciding upon the trustworthiness of the book.

The courts in the main have met a changed situation well, and in changing a rule of evidence to meet altered circumstances have made a concrete application of the words of Chief Justice Shaw in *Norway Plains Co.* v. *B. & M. R. R. Co.,* 1 Gray (Mass.) 263: "It is one of the great merits and advantages of the common law that instead of a series of detailed practical rules * * * the common law consists of a few broad and comprehensive principles, founded on reason, natural justice, and enlightened public policy, modified and adapted to the circumstances of all the particular cases which fall within it. * * * When new practices spring up, new combinations of fact arise, and cases are presented for which there is no precedent in judicial decision, they must be governed by the general principle applicable to cases most nearly analogous, but modified and adapted to new circumstances by considerations of fitness and propriety, of reason and justice, which grow out of these circumstances." G. E. L.

MARITIME LAW—PERSONALITY OF SHIP—IMMUNITY OF GOVERNMENT PROPERTY.—The recent opinions of the Supreme Court in the three cases of the *Western Maid, Liberty,* and *Carolinian* (U. S. Sup. Ct., January 3, 1922) emphasize the non-liability of national ships in cases of collision. The *Western Maid,* owned by the United States and manned by the navy, was in collision in New York harbor. The *Liberty* was a pilot boat under charter to the government and had a collision in the harbor of Boston. The *Carolinian,* also a chartered ship, had done similar damage in Brest, France. The two latter had been re-delivered to the owners, and the former to the U. S. Shipping Board, when the libels were filed, so that the process in no way interfered with the possession of the sovereign. In each case the Supreme Court issued its extraordinary writ of prohibition to prevent district courts from exercising jurisdiction.

It had been the general opinion that ships of the government incurred the same liabilty as those of individuals on account of maritime transactions, although that liability might not be enforced where it would be necessary to take the *res* out of the possession of the government by any writ or process of the court. *Davis,* 10 Wall. 15. The practice prevailed, to some extent at least, of filing a libel *in rem,* without the prayer for process, and requesting an appearance on behalf of the United States, in analogy with the English practice described in *The Siren,* 7 Wall. 152, 154. The existence of the maritime lien was assumed and suits *in rem* have been frequent, subject to the rule that property of the government might not be attached unless it could be done without disturbing the possession of the United States. Thus the books contain suits for general average, *U. S.* v. *Wilder,* 3 Sumner 308; salvage, *U. S.* v. *Morgan,* 99 Fed. 572; sailor's wages, *St. Jago de Cuba,* 9 Wheat 409; and material-men's claims, *Rev. Cutter No. 1,* Brown's Admiralty 76. All cases of this nature pre-suppose the existence of a maritime lien, inherent in the *res* itself. If the government consented to the suit, or if the suit could be prosecuted without disturbing its possession, the lien was enforced as in ordinary cases. The present cases, however, proceed on the negation of the lien itself, "Legal obligations that exist but cannot be enforced are ghosts that are seen in the law, but that are elusive to the grasp." The result would seem to be that henceforward there can be no proceeding *in rem* against property which was in the possession of the United States at the time the cause of action accrued. Unless a maritime lien arises out of the transaction itself, admiralty jurisdiction *in rem* is unthinkable, for such liens are not created by subsequent agreements. Nothing subsequent may supply an original lack of vitality. It is difficult to reconcile the decision with the *Siren, supra,* the *Davis,* 10 Wall 15, and *U. S.* v. *Lee,* 106 U. S. 196.

The brilliant writer of the majority opinion, Mr. Justice Holmes, answered the fundamental question, What constitutes the law? by "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law" (Collected Legal Papers, 173). In the same address, the body of reports, treatises and statutes are called "the sybilline leaves in which are gathered the scattered prophecies of the past upon the cases in which the axe will fall." The metaphor is a striking one; according to Vergil (*Æneid,* III, 452), the Sibyl wrote her prophecies on the leaves of trees and so arranged them within the cave that the approach of inquirers blew them into such confusion that their meaning became incomprehensible, —*inconsulti abeunt sedemque odere Sibyllae.* The line will fit more than one admiralty practitioner whose clients are asking opinions about cargoes, for instance, lost in a collision between a car-ferry operated by the Director-General of Railroads and a Navy transport allocated to the Shipping Board. The goal of the law is stability in fundamentals and the maritime law has enough reports and treatises and statutes to furnish a more substantial foundation than foliage, but its students are finding more truth than poetry in the metaphor. This will be more evident if the decision indicates a modi-

fication of the underlying doctrine of the personality of the ship. The minority of the court, in a vigorous dissent, would seem apprehensive of this result. Such a consequence would be unfortunate. The basis of admiralty jurisdiction, and the only reason for not blending it with the common law, is its proceeding *in rem*, and that proceeding depends on the theory of maritime liens, which, in itself, rests upon the individuality of the ship. From the standpoint of business, the ship cannot sail without credit and it cannot have credit without maritime liens. These are familiar platitudes, but they are derived from the inherent nature of the business itself. Another is that capital cannot be secured for the business unless the investor can be assured of a definite limitation of liability, and this ultimately depends upon the personification of the ship. Tradesmen will not furnish a ship with supplies nor salvors aid her in peril unless they have the assurance of the lien. The importance of the lien is quite as important in matters of tort, although not as conspicuous, since, for example, it is one of the elements of the underwriter's rate of premium for the running-down clause in the marine policy. At a time when we are making a colossal effort to establish a mercantile marine, with ships publicly, and not privately, owned, it will be unfortunate to impair their credit and segregate them further from the settled channels of the general maritime law. The majority opinion, it is true, warns us that "we must realize that however ancient may be the traditions of maritime law, however diverse the sources from which it has been drawn, it derives its whole and only power in this country from its having been accepted and adopted by the United States. There is no mystic overlaw to which even the United States must bow." There is, however, a very plain and definite law, to which even the United States must bow if it is to succeed in maritime affairs, and that is the general maritime law, or common law of the sea, and the established practices and requirements of the business.

G. L. C.

MARITIME LAW—SHIP UNDER CONSTRUCTION—WORKMAN'S COMPENSATION. —In *Ship Company* v. *Rhode* (U. S. Sup. Ct., January 3, 1922) the Supreme Court reaffirms the rule that locality is the test of admiralty jurisdiction in matters of tort, even if the injury was received upon a ship in the process of construction, so long as it was afloat. The tort was consummated upon navigable waters; that satisfies the criterion. The fact that the ship was not yet within the jurisdiction (because of the ship-building dogma) is immaterial; locality controls.

The second question was whether the exclusive features of the Oregon Workmen's Compensation Act abrogated the right to recover damages in admiralty. That act entitles the injured workman to receive specific payments and provides that "the right to receive such sums shall be in lieu of all claims against his employer." In the present case the workman had sued the employer in admiralty, and the Oregon statute is held to preclude the suit because it prescribes an exclusive remedy for the injury involved. It is generally held that what is a discharge of a debt in the country where it is contracted is a discharge of it everywhere, and that where an obligation